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Austin, T e x a s

May 4, 1 9 4 3

TO THE FORTY-EIGHTH LEGISLATURE:

I am returning herewith House Bill No. 428 to the House of Representatives without my approval. My objections to the bill arise from a belief that it is unconstitutional.

It is my opinion that House Bill No. 428, which purports to raise the salaries of court reporters in judicial districts composed of four counties and which fall within the population bracket of 116,200 -- 116,300, according to the last census is void because it contravenes Section 56, of Article III, of the State Constitution. Although this Act purports to be general in terms, it is to be noted that the population bracket set up embraces a difference of only 100 persons. An analysis of the last census figures show that the bill would only apply to one judicial district in the State -- the 23rd, composed of Brazoria, Fort Bend, Wharton, and Matagorda. Considering the bill and its express purpose, it is apparent that the population classification set up therein is not a substantial one and that the class set up has no distinguishing characteristics which would make it a fair basis for classification. Under these circumstances, it is my opinion that this Act is an "arbitrary device resorted to for the purpose of giving what is, in fact, a local law the appearance of a general law" and that the "attempted classification is unreasonable and bears no relation to the objects sought to be accomplished by the Act." Bexar County V. Tynan, 97 S. W. (2) 467; Miller V. El Paso County, 150 S. W. (2) 1000.

It is to be noted that Section 1 of H. B. No. 428 provides that the compensation of the court reporter shall be paid proportionately by the counties making up the district. Insofar as county funds are involved, it seems clear that this bill seeks to regulate the "affairs of counties". Such a

regulation by local law is prohibited by Section 56, of Article III of our Constitution, and the fact that the bill is passed in the form of a general law does not alter its true character. Miller V. El Paso County, 150 S. W. (2) 1000. A different question might be presented if the compensation provided for in the act were to be paid from funds other than county funds. Also a distinction should be recognized between the situation under consideration and that where the Legislature exercises a power in the enactment of a local law which is incidental to its constitutional authority to provide additional courts. Harris County V. Crooker, 224 S. W. 792.

Respectfully submitted


Coke Stevenson

Governor of Texas